

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Supreme Court No. 160594

Court of Appeals No. 343225

Lower Court No. 17-243894 FH

Plaintiff-Appellee

-VS-

ERICK ROSEAN ALLEN

Defendant-Appellant

MONROE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee

LINDSAY PONCE (P 80904)
Attorney for Defendant-Appellant

**DEFENDANT-APPELLANT'S REPLY TO APPELLEE'S SUPPLEMENTAL
BRIEF**

STATE APPELLATE DEFENDER OFFICE

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Table of Contents

Index of Authorities.....	i
Statement of Questions Presented	ii
Statement of Facts	1
Argument.....	2
I. Where the prosecution seeks to argue for the first time in this Court that a parolee is not entitled to sentence credit regardless of whether or not a parole detainer or warrant has been issued, the argument is waived by the prosecution.....	2
Judgment Appealed and Relief Sought.....	3

Index of Authorities

Cases

<i>People v McBurrows</i> , 504 Mich 308; 934 NW2d 748 (2019)	2
<i>People v Walker</i> , 504 Mich 267, 934 NW2d 737 (2019)	2

Statement of Questions Presented

- I. Where the prosecution seeks to argue for the first time in this Court that a parolee is not entitled to sentence credit regardless of whether or not a parole detainer or warrant has been issued, is the argument waived by the prosecution?

Court of Appeals made no answer.

Erick Rosean Allen answers, "Yes."

Statement of Facts

Mr. Allen adopts the Statement of Facts from his supplemental brief, filed on November 2, 2020.

Argument

- I. Where the prosecution seeks to argue for the first time in this Court that a parolee is not entitled to sentence credit regardless of whether or not a parole detainer or warrant has been issued, the argument is waived by the prosecution.**

The prosecution asserts for the first time in its supplemental brief that Mr. Allen is not entitled to jail credit for the 17 days in which he was incarcerated and no parole detainer or warrant had been issued. (Appellee's Supplemental Brief p. 13). Therefore, the prosecution contends for the first time that this Court's decision in *People v Idziak* does encompass parolees who are arrested for a new offense but not subject to a parole detainer. *Id.* at 1-4.

It is well-settled that a party raising an argument for the first time on appeal has waived that argument. *People v McBurrows*, 504 Mich 308, 328 n 11; 934 NW2d 748 (2019); *People v Walker*, 504 Mich 267, 276 n 3; 934 NW2d 737 (2019). Here, the prosecution did not raise this argument in the Court of Appeals. Rather, the prosecution conceded that Mr. Allen was entitled to jail credit for the time in which he was incarcerated and no parole detainer has been issued because Mr. Allen was held during that time solely due to his inability to furnish bond. (Appendix 85a). As a result, the prosecution has waived such argument.

This Court should consider the argument waived due to the prosecution's failure to raise it in the Court of Appeals.

Judgment Appealed and Relief Sought

Mr. Erick Rosean Allen asks this Honorable Court to either grant his application for leave to appeal or take other appropriate action.

Respectfully submitted,

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